

**United States Department of Labor
Employees' Compensation Appeals Board**

J.C., Appellant

and

**U.S. POSTAL SERVICE, EAGLE ROCK
STATION, Los Angeles, CA, Employer**

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**Docket No. 16-1649
Issued: February 8, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 9, 2016 appellant filed a timely appeal from a May 4, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish a left knee condition causally related to factors of his federal employment.

On appeal, appellant alleged that his pain steadily grew during his years at the employing establishment, that he had no family history of degenerative joint disease, and that he did not play any sports that would impair his knee.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 13, 2015 appellant, then a 51-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed arthritis of his left knee with cartilage thinning as a result of the duties of his federal employment. He indicated that the pain was manageable with medication in the early stages of his ailment, but that the pain persisted in the left knee and worsened to the point where medication did not help. Appellant stated that his knee pain was extreme and unbearable when standing or walking for long periods of time. The employing establishment noted on the claim form that he was on light duty and working three to four hours a day.

By letter dated March 26, 2015, OWCP informed appellant that additional information was necessary to support his claim, and afforded him 30 days to provide this information. In response, appellant submitted a certification of health care provider for leave under the Family and Medical Leave Act, completed by Dr. Stephen K. Riffenburgh, a Board-certified orthopedic surgeon, on January 16, 2014. Dr. Riffenburgh noted that he provided appellant treatment on May 22 and October 2, 2013, and January 15, 2014. He indicated that appellant suffered from moderate arthritis of the left knee with medial compartment narrowing, that he was receiving cortisone injections, and that he will require a Synvisc injection. Dr. Riffenburgh recommended that appellant get a push cart to carry his mail and decrease the weight off his knees. He further opined that appellant was unable to lift or carry, and if the pain persisted in his left knee, he may be unable to work.

In a March 11, 2015 duty status report, a physician assistant indicated that appellant had left knee osteoarthritis, and was restricted to lifting and carrying 10 pounds one hour a day, sitting for three hours a day, standing two hours a day, and walking one hour a day. Appellant was prohibited from climbing, kneeling, bending/stooping.

By decision dated April 27, 2015, OWCP denied appellant's claim, finding that he did not submit any medical evidence containing a medical diagnosis in connection with the claimed work factors.

On May 1, 2015 appellant requested review of the written record by an OWCP hearing representative. He noted that he believed that the thinning of his left knee cartilage was due to his work. Appellant noted that he lifted and carried mail in a satchel of up to 30 pounds while standing, walking, climbing, bending, and kneeling for long periods for 27 years. He noted that in 2013 he took pain medication each day and the pain was manageable, but that he continued with his pain in the left knee and it worsened to the point where medication no longer helped.

In further support of his claim, appellant submitted an April 9, 2015 report of an initial orthopedic consultation, wherein Dr. John Quigley, a Board-certified orthopedic surgeon, noted that appellant complained of a history of pain in his left knee that had gradually increased with work over two years. Dr. Quigley noted that appellant has had Synvisc injections in his right knee with some relief, and that he has used a knee sleeve support in the past. He listed an impression of severe degenerative joint disease of the medial compartment of the left knee. Dr. Quigley recommended medication, an unloading brace to unload the medial compartment of the left knee to help relieve pain, and sit-down work only. He noted that in the future, a total

knee replacement would probably be indicated, but that at that time, appellant should continue conservative treatment.

By decision dated October 20, 2015, the hearing representative affirmed the April 27, 2015 decision, with modification. She determined that while the evidence of record established appellant's work duties and established a medical diagnosis, she denied appellant's claim as he had failed to provide sufficient evidence of causal relationship between his diagnosed conditions and the claimed work factors.

On November 30, 2015 appellant requested reconsideration. In support thereof, he submitted a November 11, 2015 report wherein Dr. Quigley listed an impression of degenerative joint disease of the left knee, and indicated that he gave appellant an injection of Synvisc. Dr. Quigley explained that appellant had applied for compensation for his left knee injury, and that it was his impression that appellant's injury was caused or contributed to in large part by his working for the employing establishment. He noted that appellant stood three hours a day and used the full range of his body with twisting, turning, bending, stretching, and reaching over his shoulder while sorting cases, and that appellant was required to lift floor trays of unsorted mail weighing between 17 and 30 pounds to begin the sorting process. He noted that, after this, appellant removed mail from sorting cases, placed it in a tray that could weigh up to 50 pounds or more, and he lifted and placed trays in hampers which involved bending at the waist and lifting above his hips. Appellant also delivered mail, which required six to eight hours of walking on the street, including walking on hills and uneven terrain and elevated streets, and carried a satchel with mail and parcels weighing 25 to 40 pounds on his left shoulder. Dr. Quigley opined that the heavy satchel increased weight on appellant's body, causing abnormal posture. He noted that appellant also delivered about 50 heavier parcels a day, and that the bending, twisting, turning, and lifting of heavy packages in and out of his vehicle also placed increased stress on his knees. Dr. Quigley opined that the stress on appellant's knees for almost three decades contributed to the deterioration and aggravation of his knees. He noted that he saw appellant on April 9, 2015 and that he had severe degenerative joint disease of the medial compartment of the left knee with bone-on-bone. Dr. Quigley opined that appellant had degenerative joint disease of his left knee that had been caused, at least in part, and definitely aggravated by and accelerated by his work.

By decision dated May 4, 2016, OWCP denied modification of its October 20, 2015 decision, finding that appellant had not provided sufficient medical evidence to support a causal relationship between his left knee degenerative joint disease and his work duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to

the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁴ To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

ANALYSIS

OWCP accepted that appellant experienced the alleged employment factors and that appellant suffered from degenerative joint disease in his left knee. However, it denied his claim as it determined that the medical evidence of record was insufficient to establish causal relationship between the accepted employment factors and the diagnosed degenerative joint disease.

Appellant alleged that he sustained the left knee condition due to his work duties for the employing establishment. The Board finds that the reports from Dr. Quigley are sufficient to require further development of the medical evidence.

Dr. Quigley opined that appellant's degenerative joint disease of the left knee was caused, or definitely aggravated by, the duties of his federal employment. He provided an accurate and detailed description of appellant's employed duties, and described how these duties were related to his degenerative joint disease. Dr. Quigley discussed how appellant carried a satchel with mail that weighed between 25 to 40 pounds on his left shoulder and that he lifted heavy trays of mail, which placed additional weight on appellant's body and caused abnormal

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *See S.P.*, 59 ECAB 184, 188 (2007).

⁵ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see also P.W.*, Docket No. 10-2402 (issued August 5, 2011).

⁶ *I.J.*, 59 ECAB 408 (2008).

posture. He noted that appellant engaged in bending, twisting, turning, and lifting of heavy packages in and out of his vehicle while delivering mail, which placed stress on appellant's knees. Dr. Quigley opined that this additional stress on appellant's knee over the course of three decades aggravated and accelerated appellant's degenerative joint disease of the left knee.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.⁷ While Dr. Quigley's opinion is not sufficiently rationalized to discharge appellant's burden of proving that the accepted duties of his federal employment caused the degenerative joint disease in his left knee, his opinion is based on an accurate history and he provided sufficient rationale to require further development of the case record by OWCP.⁸

On remand, OWCP should refer appellant to an appropriate Board-certified specialist for a second opinion evaluation. After this and such further development as OWCP deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The Board finds that this case is not in posture for decision.

⁷ A.C., Docket No. 16-0624 (issued August 25, 2016).

⁸ See *D.W.*, Docket No. 15-0367 (issued July 14, 2015); *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 4, 2016 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: February 8, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board